

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Crim. Action No.: 2:20CR9
(Judge KleeH)

MATTHEW SCOTT UPTON,

Defendant.

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
CONCERNING PLEA OF GUILTY IN FELONY CASE [DKT. NO. 35],
ACCEPTING GUILTY PLEA, AND SCHEDULING SENTENCING HEARING

On July 21, 2020, the Defendant, Matthew Scott Upton ("Upton"), appeared before United States Magistrate Judge Michael J. Aloï and moved for permission to enter a plea of **GUILTY** to Counts One and Two of the Indictment, charging him with Possession with Intent to Distribute 5 Grams or More of Methamphetamine, in violation of Title 21, U.S.C. Sections 841(a)(1) and 841(b)(1)(B) and Unlawful Possession of a Firearm, in violation of Title 18, U.S.C. Section 922(g) and 924(a)(2). Upton stated that he understood that the magistrate judge is not a United States District Judge, and Upton consented to pleading before the magistrate judge. This Court referred Upton's plea of guilty to the magistrate judge for the purpose of administering the allocution, pursuant to Federal Rule of Criminal Procedure 11, making a finding as to whether the plea was knowingly and

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voluntarily entered, and recommending to this Court whether the plea should be accepted.

Based upon Upton's statements during the plea hearing, and the Government's proffer establishing that an independent factual basis for the plea existed, the magistrate judge found that Upton was competent to enter a plea, that the plea was freely and voluntarily given, that Upton was aware of the nature of the charges against him and the consequences of his plea, and that a factual basis existed for the tendered plea. The magistrate judge issued a *Report and Recommendation Concerning Plea of Guilty in Felony Case* ("R&R") [Dkt. No. 35] finding a factual basis for the plea and recommending that this Court accept Upton's plea of guilty to Counts One and Two of the Indictment.

The magistrate judge also directed the parties to file any written objections to the R&R within fourteen (14) days after service of the R&R. He further advised that failure to file objections would result in a waiver of the right to appeal from a judgment of this Court based on the R&R. Neither Upton nor the Government filed objections to the R&R.

Accordingly, this Court **ADOPTS** the magistrate judge's R&R [Dkt. No. 35], provisionally **ACCEPTS** Upton's guilty plea, and

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ADJUDGES him **GUILTY** of the crimes charged in Counts One and Two of the Indictment.

Pursuant to Fed. R. Crim. P. 11(c)(3) and U.S.S.G. § 6B1.1(c), the Court **DEFERS** acceptance of the proposed plea until it has received and reviewed the presentence investigation report prepared in this matter.

Pursuant to U.S.S.G. § 6A1 et seq., the Court **ORDERS** the following:

1. The Probation Officer shall undertake a presentence investigation of Upton, and prepare a presentence investigation report for the Court;

2. The Government and Upton shall each provide their narrative descriptions of the offense to the Probation Officer by **August 21, 2020**;

3. The presentence investigation report shall be disclosed to Upton, his counsel, and the Government on or before **October 20, 2020**; however, the Probation Officer shall not disclose any sentencing recommendations made pursuant to Fed. R. Crim. P. 32(e)(3);

4. Counsel may file written objections to the presentence investigation report on or before **November 3, 2020**;

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5. The Office of Probation shall submit the presentence investigation report with addendum to the Court on or before **November 11, 2020**; and

6. Counsel may file any written sentencing memorandum or statements and motions for departure from the Sentencing Guidelines, including the factual basis for the same, on or before **November 16, 2020**.

The magistrate judge remanded Upton to the custody of the United States Marshals Service.

The Court will conduct the **Sentencing Hearing** for Upton on **Monday, November 23, 2020**, at **2:00 P.M.**, at the **Elkins, West Virginia** point of holding court.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to counsel of record and all appropriate agencies.

DATED: August 10, 2020

/s/ Thomas S. Kleeh
THOMAS S. KLEEH
UNITED STATES DISTRICT JUDGE